In the Supreme Court
OF THE
United States

Supreme Court, U. S.
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OCTOBER TERM, 1949

No. 224

REUBEN FRANKLIN BASKIN, by his guardian ad litem and trustee, Catherine Dunn,
Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, KAISER COMPANY, INC., and HARTFORD ACCIDENT & INDEMNITY COMPANY,
Respondents.

BRIEF FOR RESPONDENTS KAISER COMPANY, INC., AND HARTFORD ACCIDENT & INDEMNITY COMPANY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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OPINIONS BELOW.

The opinion of the District Court of Appeal of the State of California, First Appellate District, Division Two, is reported as Baskin v. Ind. Acc. Com., 89 A. C. A. 694, 201 P. 2d 549. It is printed in the record. R 92-98. No opinion was rendered by the Supreme Court of the State of California in denying a hearing.

JURISDICTION.

These respondents question certiorari jurisdiction. A special argument respecting jurisdiction is made in a later part of the brief.

QUESTIONS INVOLVED.

1. Whether the petition shows a case within the certiorari jurisdiction of this Court.

2. Whether, assuming certiorari jurisdiction, the petition shows a substantial question.

STATEMENT.

The record is concerned with the case of a workman whose employment was maritime and whose injury occurred on navigable waters. Petitioner Baskin was a member of a gang employed to repair the William Moultrie, a completed ship. R 19, 33-35, 51. In the course of his employment, and while working on the

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ship on navigable waters, he fell into the ship's hold and was injured on December 10, 1945. R 58, 83.

The fact of injury was duly reported to the Federal Deputy Commissioner of the Thirteenth Compensation District on the prescribed forms. R 5, 12. Medical attention was provided and compensation indemnity paid in accordance with the provisions of the Longshoremen's and Harbor Workers' Act, 33 U.S.C.A., sec. 901 et seq. R 14-16. Baskin's sister, his present guardian ad litem, looked after his affairs. R 66. She and a representative of the insurance carrier of the employer discussed a proposed commutation or settlement of the amounts due under the said Act, but the deputy commissioner disapproved the commutation. R 9-10.

The present proceedings were thereafter instituted before the Industrial Accident Commission of the State of California and benefits claimed under the state workmen's compensation laws. R 2. The proceedings were dismissed by the commission on March 29, 1949, for want of jurisdiction. R. 87. On January 11, 1949, the District Court of Appeal of the State of California affirmed the order and award of the commission. R 92. It denied a rehearing on February 10, 1949. R 98. And the Supreme Court of the State of California, without opinion, denied a hearing on March 10, 1949. R 99.

ARGUMENT.

(1) REVIEW OF THE DECISION OF THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA SHOULD BE DENIED, FOR THE REASON THAT THE PETITION DOES NOT SHOW A CASE WITHIN THE CERTIORARI JURISDICTION OF THIS COURT.

Petitioner asserts jurisdiction under 28 U.S.C.A., sec. 1257 (3). Pet. 4. The third subdivision of the section has three clauses. It is plain that petitioner is relying on the second clause which confers certiorari jurisdiction "where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution . . . of the United States". The scope of petitioner's assertion is that the District Court of Appeal held the workmen's compensation laws of California to be repugnant to section 2 of article 3 of the federal constitution granting admiralty and maritime jurisdiction to the federal government and depriving states of power to enlarge or restrict it. But the District Court of Appeal did not make a holding of that character. What the court held in the case before it, where maritime employment and maritime injury concurred, was that the state workmen's compensation laws were consistent with said section 2 of article 3 and are to be construed in accordance with the interpretation given those constitutional provisions by this Court in *Southern Pacific Co. v. Jensen,* 244 U.S. 205. No other construction was open to the District Court of Appeal, for the Supreme Court of California has uniformly held that where maritime employment and maritime injury concur, the workmen's compensation laws of California are to be

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construed according to the principles declared in the *Jensen* case. *Sudden & Christenson v. Ind. Acc. Com.*, 182 Cal. 437, 438; *Occidental Indemnity Co. v. Ind. Acc. Com.*, 24 Cal. 2d 310, 313. As an intermediate court, the District Court of Appeal is bound by the decisions of the Supreme Court of California and must accept its construction of state laws. *Estate of Fleishman*, 62 Cal. App. 2d 588. That is all that the District Court of Appeal did in the present case. And it is well settled that the construction given a state law by a state court is binding on the Supreme Court of the United States. As the petition herein merely seeks to disturb construction of that character, it follows that certiorari jurisdiction is lacking and the petition for writ of certiorari should be denied. *Red Cross Lines v. Atlantic Fruit Co.*, 264 U.S. 109, 120; *Ward & Gow v. Kripsky*, 259 U.S. 503, 510; *Quong Ham Wah Co. v. Ind. Acc. Com.*, 255 U.S. 445, 448-449.

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(2) REVIEW OF THE DECISION OF THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA SHOULD BE DENIED, FOR THE REASON THAT, ASSUMING CERTIORARI JURISDICTION, THE PETITION DOES NOT SHOW A SUBSTANTIAL QUESTION.

A contract to repair a completed ship is traditionally maritime, and as a member of the repair gang petitioner's employment was unquestionably maritime. *Baizley Iron Works v. Spam*, 281 U.S. 222; *Northern Coal & Dock Co. v. Strand*, 278 U.S. 142; *Mesel v. Foundation Co.*, 274 U.S. 427; *Robins Dry Dock etc.*

Co. v. Dahl, 266 U.S. 449; *Gonzales v. Morris Dry Dock etc. Co.,* 266 U.S. 171; *Great Lakes etc. Co. v. Kierejewski,* 261 U.S. 470; *New Bedford Dry Dock Co. v. Purdy,* 258 U.S. 9; *Grant etc. Ship Co. v. Rohde,* 257 U.S. 469.

In cases like the present, where maritime employment and maritime injury concur, *Southern Pacific Co. v. Jensen,* 244 U.S. 205, settled the law that state workmen's compensation laws may not intrude. And in cases where those two elements combine this Court has adhered to the *Jensen* decision. *Knickerbocker Ice Co. v. Stewart,* 253 U.S. 149; *Washington v. Dawson & Co.,* 264 U.S. 219; *Employers' Liability Assur. Corp. v. Cook,* 281 U.S. 233; *Parker v. Motor Boat Sales, Inc.,* 314 U.S. 244.

Here the workman was engaged in the repair, between voyages, of the hold of an ocean going commissioned steamship while lying on navigable waters of the United States.

It has long ceased to be a substantial question whether state workmen's compensation laws may intrude in cases of the present type. The Longshoremen's and Harbor Workers' Compensation Act is appropriate to give full relief in such cases, and the facts in the record show that petitioner is getting that relief.

Petitioner relies heavily on *Davis v. Department of Labor,* 317 U.S. 249, and *Bethlehem Steel Co. v. Moore,* 335 U.S. 874. In neither case did maritime employment and maritime injury concur. Each merely

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had some amphibious characteristic. In the *Davis* case the injury was maritime but the employment was not. Davis was a structural steel worker employed in dismantling a bridge—a nonmaritime employment. He was killed when he fell or was knocked into the water—a maritime injury. The same is true of the *Bethlehem* case. The injured party was employed on a land based crane bringing materials to a ship—a nonmaritime employment. Injury occurred when he stepped aboard a ship in navigable waters—a maritime injury. It is therefore clear that neither case is in point.

An overstatement in the footnote at page 10 of the petition needs correcting. Petitioner says that "because of the time element involved" the *Bethlehem* case could not be made available to the state appellate courts. Petitioner is mistaken. He had plenty of time. The decision by the Massachusetts court in the *Bethlehem* case (323 Mass. 462, 80 N.E. 2d 478) was available to him, of course, throughout his entire proceedings in the state courts. This Court decided the *Bethlehem* case on December 6, 1948. The District Court of Appeal did not decide petitioner's case until January 11, 1949 (R 92); it denied a rehearing on February 10, 1949 (R 98); and the state Supreme Court denied a hearing on March 10, 1949 (R 99). From December 6, 1948, to March 10, 1949, petitioner had opportunity to make the *Bethlehem* decision available to the state courts if he deemed it important. His failure to do so must be ascribed to lack of diligence rather than lack of time.

CONCLUSION.

These respondents therefore respectfully submit that the petition for a writ of certiorari should be denied.

Dated, San Francisco,
August 29, 1949.

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